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right to recover damages for breach of warranty: *Coal Co.* v. *Bradley,* 27 Pac. 454; *Weed* v. *Dyer,* 53 Ark. 155; BENJAMIN, SALES (Seventh Am. Edition), p. 961. Nor does it seem that the keeping and using of the goods with knowledge that they do not conform to the warranty, should operate as a waiver. *Lanson* v. *Aultman, etc., Co.,* 86 Wis, 281; *Taylor, etc., Co.* v. *Pumphrey* (Texas), 32 S. W. 225; *Breen* v. *Moran* (Minn), 53 N. W. 755; *Best* v. *Flint,* 58 Vt. 543; *Dayton* v. *Hoaglund,* 39 Oh. St. 671; BENJAMIN, SALES (Seventh American Edition), p. 960. It would seem that the vendee has a right to rely upon the warranty given by the vendor and can accept the goods, in reliance upon the warranty, without examination, and if he discovers that the goods do not conform to the warranty he is under no duty to return them but can keep them and sue for the damages or set up counter claim for damage resulting from the breach.

SPECIFIC PERFORMANCE—CONTRACTS TO DEVISE—ANTENUPTIAL CONTRACT—ENFORCEMENT.—Action for specific performance of an alleged contract between plaintiff and his father, the testator. The controversy arises not from a defect in the will, but from an antenuptial contract whereby testator stipulated as follows: "and the said Jas. Phalen and C. S. his wife do farther respectively covenant and agree that they will make no distinction between their children as regards the proportion of their estates coming to each, etc." The theory of the present case is that testator left the plaintiff's equal share, not absolutely to him, but changed it by Codicil 7, whereby testator directed that the portion of his residuary estate bequeathed to his son the plaintiff should be held in trust and upon his death go to his heirs. In the opinion delivered by WERNER, J., (three judges concurring and three dissenting) it was *held,* (1) That a court of equity will in the exercise of sound discretion consider whether, under the circumstances, it will be equitable and just to compel the trustee, holding the property in trust to turn it over to the son. (2) That the antenuptial contract which was made because of the son's coming marriage was supported by sufficient consideration to uphold specific performance. *Phalen* v. *United States Trust Co. of New York et al* (1906), — N. Y. —, 78 N. E. Rep. 943.

The holding is sustained by the weight of authority, as to the right of the court to grant specific performance, in *King* v. *Hamilton,* 29 U. S. (4 Pet.) 311; *McCabe* v. *Crosier,* 69 Ill. 501; *Peris* v. *Haley,* 61 Mo. 453; *Murdfeldt* v. *N. Y., W. S. & B. Ry.,* 404. (2) That marriage is a good consideration, see *Chichester* v. *Cobb,* (Eng.) 14 L. T. N. S. 433; *Thompson* v. *Thompson,* 17 Ohio St. 649; *Barr* v. *Hill,* Add. (Pa.) 276; *Caines* v. *Jones,* 5 Yerg. (Tenn.) 249; *Eppes* v. *Randolph,* 2 Call (Va.) 125; *Wall* v. *Scales,* 1 Dev. Eq. N. C. 476; *Keays* v. *Gilmore,* Irish R. 8 Eq. 296, and SCHOULER, DOM. REL. § 178, holding that "the promise of a third party may be for the wife's benefit; or it may be for the mutual benefit of the married parties, and enforceable accordingly."

STREET RAILWAYS—LIABILITY FOR COST OF PAVING SPACE BETWEEN RAILS.—Plaintiff city after taking the proper preliminary steps was engaged in paving a street. Notice to pave its portion of the street was given the defend-

ant street railway company which was maintaining its tracks on that street under a charter imposing upon it the duty to "keep the surface of the street inside the rails and for one foot outside thereof in good order and repair," etc. The company having failed to perform the work, the city completed the pavement of the entire street, and sued the railway company for the cost of its portion. *Held,* that it could recover. *Mayor, etc., of City of New York* v. *Harlem Bridge M. & F. Ry. Co.* (1906), — N. Y. —, 78 N. E. Rep. 1072.

From neither the opinion nor the statement of facts given in the Reporter is it clear whether the street had never been paved before or whether it was a repavement. If the latter, the decision is supported by the following New York cases: *Conway* v. *City of Rochester,* 157 N. Y. 33, 51 N. E. 395; *Binninger* v. *City of New York,* 177 N. Y. 199, 69 N. E. 390; and *Village of Mechanicsville* v. *Stillwater & M. St. Ry. Co.,* 35 Misc. Rep. 513, 71 N. Y. Supp. 1102, affirmed 174 N. Y. 507. In the last case the street had been previously paved only with small stone. Some authorities maintain that when it is not a case of repavement but of pavement in the first instance the same rule does not apply. See 27 AM. & ENG. ENC. OF LAW, 42. It is not perfectly clear, though, why such a distinction should be made. It seems that a street railway company is bound to keep its portion of the street in repair even in the absence of express provision imposing the duty. *Worster* v. *Railway Co.,* 50 N. Y. 203; *State* v. *Hoboken,* 41 N. J. L. 71; *Railway Co.* v. *State,* 87 Tenn. 746. The duty is, however, usually expressly imposed, and the question arising most often is, whether the duty to repair includes the duty to improve . On this point the decisions are diverse. See ELLIOTT, ROADS AND STREETS, §§ 772 et seq., and cases cited therein; also *Chicago* v. *Sheldon,* 9 Wall. 50; *Paving & Supply Co.* v. *Railway Co.,* 128 Ind. 525, 25 Am. St. Rep. 462; *Florida* v. *Jacksonville St. Ry. Co.,* 29 Fla. 590. A very late case that has carried the doctrine about as far as any is *City of Reading* v. *United Traction Company* (1906), — Pa. St. —, 64 Atl. 446, in which the Supreme Court of Pennsylvania held the railway company liable for cost of putting down pavement, the jury having found that notice was given and that the repairing was reasonable, necessary and proper. For further cases involving the general principle of the principal case see *Fielders* v. *Railway Co.,* 67 N. J. L. 76, 50 Atl. 533; *Doyle* v. *New York,* 58 App. Div. 588, 69 N. Y. Supp. 120; *Columbus* v. *Railway Co.,* 45 Oh. St. 98, 12 N. E. 651; *Norristown* v. *Railway Co.,* 148 Pa. St. 87, 23 Atl. 1060; *City of Reading* v. *Traction Co.,* 24 Pa. Co. Rep. 629, 202 Pa. St. 571, 52 Atl. 106; *McKeesport* v. *Railway Co.,* 158 Pa. St. 447, 27 Atl. 1006. The method of recovery in many of these cases cited would seem to be explained only as an exception to the general rule that one person cannot, without request, perform the contract obligations or duties of another, and then sue for the benefit conferred. Mandamus also seems to be a proper remedy, and has been employed in some cases. *Florida* v. *Jacksonville A. & Ry. Co., supra; People* v. *Fort Street, etc., Railway Co.,* 41 Mich. 413.

TAXATION—TRANSFER TAX—SHARES IN CONSOLIDATED CORPORATION—VALUATION.—New York Laws of 1896, p. 868, c. 908, § 220, as amended by Laws of 1897, p. 150, c. 284, § 2, imposes a tax upon the transfer of any personal